**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming | ) ) ) | MB Docket No. 05-255 |

# REPLY COMMENTS


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October 11, 2005

## I. INTRODUCTION

BellSouth Corporation and its affiliated multichannel video programming distributor ("MVPD"), BellSouth Entertainment, LLC ("BEI") (hereinafter referred to collectively as "BellSouth"), respectfully submit their reply comments in response to the Commission's *Notice of Inquiry*.[1] In particular, BellSouth addresses claims by the National Cable & Telecommunications Association ("NCTA") that new entrants to the video market should be "required to obtain franchises from local franchising authorities and build out their facilities to serve entire communities" just as cable operators have done because, according to NCTA, such "social obligations" will promote competition and should be shared by all competing providers or none at all.[2] Such claims are misguided and not supported by the evidence. Such claims also are completely hypocritical in light of: (i) the selective manner in which cable operators have rolled out their new services and technologies; and (ii) NCTA's position that new entrants in the telecommunications market should not be subject to the same regulatory requirements that historically have applied to incumbent telephone companies.

## II. DISCUSSION

### A. The Imposition Of Legacy Cable Regulation On New Entrants To The Video Market Is Inappropriate, Unnecessary, And Would Not Promote Competition.

While asserting that new entrants in the video market should be subject to the local franchise process and must-build obligations, NCTA makes little effort to explain why such

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[1] *In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming,* MB Docket No. 05-255, Notice of Inquiry (August 12, 2005) (*"Notice of Inquiry"*).

[2] Comments of the National Cable & Telecommunications Association, at 3-4 & 19-20 (*"NCTA Comments"*).

requirements are appropriate or how they would promote competition.[3] Such assertions also cannot be reconciled with the record evidence which conclusively establishes otherwise. As BellSouth explained in its comments, it took BellSouth an average of 11 months to negotiate local franchise agreements to provide cable "overbuild" service in 20 local markets in its telephone service area, and in some cases, the franchise negotiation process took almost three years to conclude.[4] BellSouth's experience is not unique. For example, it took "nearly three years of intensive effort" for Qwest "to renegotiate its seven franchises in the Phoenix area, where Qwest is already operating under franchise, and to obtain eight new agreements in Phoenix, Denver, and Salt Lake City metropolitan markets."[5] The record is replete with other instances of the local franchising process frustrating competitive video entry.[6]

A "must build" obligation is particularly antithetical to competitive entry. The "must build" requirement was historically imposed on incumbent cable operators to ensure that, in a marketplace that could economically support only one wireline video provider, cable services

[3] NCTA's only purported justification for extending legacy cable regulation to new entrants is its oft-uttered mantra that "if we had to do it, so should they." This issue is discussed in greater detail below.

[4] BellSouth Comments, Declaration of Thompson (Tom) T. Rawls II, ¶¶ 3-4.

[5] Comments of Qwest Communications, International, Inc., at 12-14 (hereinafter referred to as "Qwest Comments").

[6] *See, e.g.,* Comments of CenturyTel, Inc. at 3 (outlining the "burdensome delays and costs of franchising," even where a municipality is interested in facilitating competitive entry and the incumbent cable operator did not oppose CenturyTel's application); Comments of USTelecom at 9 (explaining how the local franchise process prevented video competition in Otsego, Minnesota); Comments of Verizon at 12-13 (noting "outrageous demands" by local franchising authorities as part of the franchising process, including proposals that Verizon "fund the municipality's purchase of street lights from the local power company," "allow parking for the town library at a Verizon facility," provide "free use of Verizon conduit and manholes as well as free attachments to all Verizon utility poles," and "provide fiber to 60 'human services' organizations that work with the county").

eventually would be available in substantially all areas in a local community. In return, incumbent cable operators were granted what amounted to an exclusive right to earn all wireline video revenues from customers during the term of the franchise. Incumbent cable operators have had decades to fulfill this social contract and to maximize their return on investment unencumbered by effective competition for the vast majority of time.

The public policy reasons for requiring incumbent cable operators to provide service to all households in a franchise area have been achieved, and no sound public policy exists for imposing a similar requirement upon a new entrant, notwithstanding NCTA's claims to the contrary. First, a "must build" requirement today is economically unjustifiable. When cable operators first installed their networks, they were the only game in town. Thus, cable operators could afford to build out to reach every customer in their franchise territory because they had every expectation that customers who wanted to subscribe to cable would buy their service. Most significantly, incumbent cable operators were able to operate for decades in this single provider environment to recover the investments needed to satisfy their "must build" obligations. For the third or fourth entrant in a market, however, there is no similar expectation or opportunity.[7]

Second, a "must build" requirement is unnecessary. Telephone companies have a financial incentive to deploy facilities to compete against cable operators, as evidenced by the billions of dollars spent to deploy DSL. However, such deployment takes time and considerable investment, and innovation and competition will drive new entrants to provide the broadest possible network coverage, as has been the case with wireless telephone and Direct Broadcast

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[7] *See* Qwest Comments at 10-11 (noting Qwest's inability to compete against the incumbent cable operator in Phoenix, Arizona "under franchise build-out rules that made sense only in a monopoly environment").

Satellite ("DBS") services. The pace of such deployment should be mandated by the market, not the government.

Third, a "must build" requirement for video services such as Internet Protocol Video (or "IPTV") will not benefit consumers. Ubiquitous demand for broadband does not currently exist. Unlike TVs or phones, there are substantial numbers of households without a computer, and even for some customers with computers, their use is often limited to retrieving e-mail and the like that may not require a broadband connection. Requiring an IPTV provider to build out facilities to offer broadband to reach households that do not currently have a need or desire for the service would only constitute a barrier to entry.

Furthermore, a build out requirement is particularly problematic for telephone companies seeking to enter the video market because the geographic areas served by their existing networks and the jurisdictional boundaries of particular local franchising authorities "may not match." For example, BellSouth has a cable franchise to serve unincorporated Cherokee County, Georgia. However, the geographic area of this cable franchise is considerably larger than the boundaries of the wire center in which BellSouth provides telephone service, which makes any "must build" obligation particularly problematic.[8]

That the local franchising process and "must build" obligations impede competitive entry is best illustrated by the current video market. NCTA goes to great lengths to portray the video market as "vibrantly competitive," touting in particular the market penetration of DBS providers such as DirecTV and EchoStar.[9] In particular, NCTA notes that, during the period from 2001 to

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[8] Appendix 1; *see also* Comments of Cincinnati Bell, Inc. at 7 (noting Cincinnati Bell's inability "to serve all of the customers in a given LFA's jurisdiction given the fact that Cincinnati Bell's network and the LFA's jurisdictional boundaries may not match").

[9] NCTA Comments at 6-7.

2004, the DBS penetration rate grew approximately 50 percent, 32 percent, and 15 percent in urban, suburban, and rural areas, respectively.[10] However, NCTA conveniently ignores the very relevant fact that DBS providers are not subject to the local franchising process and have no "must build" obligations (or any other local franchise obligations for that matter, such as service performance, institutional network, or PEG channel requirements). There is simply no reason to believe that DBS penetration would have been nearly so successful had DBS providers been subject to the same legacy cable regulation with which NCTA seeks to saddle other entrants.

NCTA also seeks to justify imposing a "must build" requirement upon new wireline video entrants by insisting that, without such a requirement, telephone carriers seeking to enter the video market will "redline" by targeting their video services only to "high value" areas.[11] This is the same accusation leveled by Brian Roberts, Chairman of Comcast, who earlier this year told analysts that "legislators and regulators are going to decide, `Is it fiber-to-the-home or fiber to the rich?'"[12] Such accusations are simply false, as Mr. Roberts and NCTA know.

The term "redlining" refers to the practice of denying or increasing the cost of service to residents of certain areas based upon such criteria as race or socioeconomic status. The term originated in the 1930s when banks would actually mark red lines on a map in order to delineate areas to which they did not want to lend because of the race of the residents.[13] BellSouth does not, and will not engage in redlining.

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[10] *Id.* at 7.

[11] NCTA Comments at 3.

[12] Hearn, Ted, "Roberts On Bells: Fiber To the Rich," *Multichannel News* (May 10, 2005).

[13] *See http://en.wikipedia.org/wiki/redlining.*

For example, when BellSouth deployed its DSL service, it did so without regard to a customer's race or socioeconomic status. Currently, approximately 80% of BellSouth's customer locations have access to DSL, and those that don't generally are located in more remote areas that are technically challenging and very expensive to serve – a fact that has nothing to do with race or socioeconomics. The technology BellSouth is considering deploying to support a video offering -- IPTV -- requires a broadband (DSL) connection; it simply makes no sense to suggest that BellSouth would refuse to provide IPTV to certain customers based on their race or socioeconomic status in areas where BellSouth has provided or plans to provide broadband service. BellSouth did not do that with DSL and will not do it with IPTV.

However, the issue of "redlining" should not be confused with mandatory "build-out," as NCTA attempts to do. Federal law provides that cable services may not be "denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides."[14] However, this provision "*prohibits discrimination on the basis of income; it manifestly does not require universal service.*"[15]

In other words, the prohibition against "redlining" does not mean that a video provider must deploy new technologies or make available new services to all of its customers on a ubiquitous basis. In fact, cable operators routinely rollout new services and new technologies only in selective areas.

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[14] 47 U.S.C. § 541(a)(3).

[15] *American Civil Liberties Union v. FCC*, 823 F.2d 1554, 1580 (D.C. Cir. 1987), *cert. denied Connecticut v. FCC*, 485 U.S. 959 (1988); *see also* Report and Order, *Implementation of the Provisions of the Cable Communications Policy Act of 1984*, MM Docket 84-1296, 50 Fed. Reg. 18,637, 18, 647 (May 2, 1985).

For example, when Comcast launched its HDTV service in 2001, it made the service only available to "customers in parts of Pennsylvania, New Jersey and Delaware ...."[16] In 2002, Comcast rolled out HDTV service in northern New Jersey; the Washington, D.C./Metro Virginia area; the Baltimore, Md., area; Danbury, Conn.; the Nashville and Knoxville, Tenn., areas; southeast Michigan, including the Detroit and Flint areas; the Indianapolis, Ind., area; the Sarasota, Fla., area; and the Seattle, Wash., area. In 2003, Comcast's HDTV service was launched in the Boston, Mass., Atlanta, Ga., Jacksonville and Fort Myers, Fla., and Sacramento, Los Angeles and San Francisco-San Jose, Calif., areas.[17] Although Comcast has subsequently rolled out HDTV service in additional markets, it has taken some customers four years to get the service, and approximately 7% of Comcast's customers cannot get HDTV service at all.[18]

Comcast has employed a similar approach with its rollout of IP phone service, limiting the service initially to a portion of the Philadelphia area and subsequently expanding the service in *selective* markets after its merger with AT&T Broadband had been completed.[19] Likewise, with its high-speed broadband services, Comcast initially launched the service in 14 U.S. markets, noting that "the increased speeds will be *progressively deployed* to all Comcast markets based on technical readiness."[20]

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[16] http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-ewsArticle&t=Regular&id=452457&

[17] http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-ewsArticle&t=Regular&id=451740&

[18] http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-digital (noting that HDTV is available to approximately 93% of its customers, while Comcast's On Demand service is available to approximately 85% of its customers).

[19] http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-ewsArticle&t=Regular&id=452193&

[20] http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-ewsArticle&t=Regular&id=454829& (emphasis added).

Comcast is not alone. For example, Time Warner's high-speed broadband service was initially deployed in only selective markets, and it took customers in some areas of Wisconsin more than four years to receive the service.[21] Likewise, Cox Communications recently announced plans to launch interactive television, iTV, in only five of its markets in Florida by the end of 2005, which would leave most of its approximately 6 million cable customers without access to the service.[22]

The cable companies' foray into telephony is particularly instructive. For example, when Time Warner began offering telephone exchange service in North Carolina shortly after passage of the 1996 Act, it did so through an affiliate serving only business customers in the Charlotte area and around Raleigh.[23] Likewise, when rolling out its digital phone service in New York in 2003, Time Warner started with neighborhoods in Manhattan, Queens, Staten Island, and upstate New York. The service subsequently was expanded to additional neighborhoods in these areas as well as to Brooklyn in 2004 and 2005.[24] Advanced telephony technologies are not made ubiquitously available by cable operators. For example, approximately 30% of Cox's customers are unable to get Cox's digital telephone service, which employs VoIP technology.[25]

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[21] http://www.timewarner.com/corp/newsroom/pr/0,20812,667728,00.html

[22] http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irolNewsArticle&t=Regular&id=691407&

[23] Boraks, David, *It's For You: Businesses First To Benefit From Local Calling Competition*, The Charlotte Observer, at 10D (May 6, 1996).

[24] http://www2.twcnyc.com/pressDP/maps/mymap.cfm?startnode=20040811120629835 (New York City);
http://www2.twcnyc.com/pressDP/maps/mymap.cfm?startnode=20040811121927513 (Hudson Valley).

[25] http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-NewsArticle&t=Regular&id=683077&

NCTA readily acknowledges that the benefits of new services and technologies offered by cable operators are not available to all customers. For example, in its 2004 Year-End Industry Overview, NCTA notes that cable's high-speed Internet service is available to 91% of U.S. households passed by cable; however when the service was first being offered, it was available to less than 35% of U.S. households in 1999 and less than 60% in 2000.

There is nothing wrong with the approach taken by the cable companies in deploying new services and technologies. Offering service initially only in selective markets allows a company to determine whether the service will be commercially viable before incurring the expense of making it available on a broader, more ubiquitous basis. Such an approach is prudent and certainly does not constitute "redlining."

The NCTA recently proclaimed that all services should be made "available to all residents, regardless of income."[26] BellSouth agrees. However, just as the cable companies have been able to deploy new services and technologies in selective markets without any requirement to serve all customers on a ubiquitous basis, new entrants should be able to do likewise in rolling out their new video services and technologies, such as IPTV.

**B. Asymmetric Regulation Does Not Justify The Imposition Of Legacy Cable Regulation On New Entrants To The Video Market.**

NCTA laments the plight of incumbent cable operators, going to great lengths to predict that dire consequences will befall NCTA's members if incumbents and new entrants are subject to different regulatory requirements.[27] NCTA goes so far as to speculate that it would not be

[26] NCTA White Paper, "Working Toward A Deregulated Video Marketplace" (June 2005).

[27] NCTA Comments at 16-25.

surprising if "a cable operator would be so disadvantaged that it eventually was forced to exit the entire franchise area" unless new entrants are subject to incumbent legacy cable regulation.[28]

Such speculation is unfounded and impossible to take seriously, particularly when NCTA boasts about the "more than $100 billion" that cable operators have invested "to upgrade their facilities" in the past decade.[29] There is no reason to believe that cable operators would walk away from these investments if new entrants are not subject to "must build" obligations. In fact, the evidence is otherwise; in those markets in which BellSouth has had a franchise to provide cable overbuild service for nearly a decade but is not subject to must build requirements, none of the incumbent cable operators has "been forced to exit."

Asymmetric regulation is nothing new, and incumbents and new entrants are routinely subject to different regulatory regimes. The telecommunications market is the poster child of asymmetric regulation, with incumbents such as BellSouth subject to burdensome and costly regulatory rules that do not apply to new entrants, including cable operators offering telephony. For example, Section 251(c) of the Telecommunications Act of 1996 saddled incumbent local exchange carriers with duties, including unbundling and resale, to which new entrants are not subject. Likewise, incumbent local exchange carriers are subject to a host of regulations relating to billing, payment, credit and collection, disconnection, and quality of service standards, which, by and large, do not apply to new entrants. Incumbents also have carrier of last resort obligations, which preclude them from denying any reasonable request for telephone service in their geographic territory, but which do not apply to cable operators.

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[28] *Id.* at 4.

[29] *Id.* at 17.

In short, cable operators can provide telephony service wherever, whenever, and to whomever they want as long as it is in their financial self-interest to do so. And, not surprisingly, that is exactly what cable operators have done, electing to offer telephony service only in selective markets. For example, Comcast offers cable service throughout the Miami-Fort Lauderdale, Florida Designated Market Area ("DMA"), which consists of the principal communities of Key West, Pompano Beach, Hialeah, Kendall, Margate, Key Largo, Miami, North Dade County, Ft. Lauderdale, Davie, South Broward County, and the Immokalee and Big Cypress Seminole Indian reservations. Although Comcast provides cable service in each of these communities, it makes telephony service available only in Pompano and Hialeah.[30]

Likewise, Cox provides cable service in the Lafayette, Louisiana DMA, which consists of the principal communities of Crowley, Lafayette, St. Martinville, Abbeville, and New Iberia, Louisiana. Although Cox cable service is available in each of these communities, Cox has chosen not to provide telephony service in either Abbeville or New Iberia.[31] Other examples abound, as evidenced by Time Warner's selective telephony offerings in only certain communities in DMAs in both North Carolina and South Carolina.[32]

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[30] Declaration of Eric Fogle, Exhibit 1 ("*Fogle Declaration*"). This same situation exists in the Jacksonville, Florida DMA and the Atlanta, Georgia DMA, where Comcast only offers telephony service in selective communities (such as Jacksonville and the central portion of Atlanta), while not offering telephony service in other communities in which they provide cable service (such as MacClenny, Crescent City, Lake Butler, Hastings, and Welaka, Florida and Elberton, Tallapoosa, Griffin, and northern Atlanta, Georgia). *Id.*

[31] *Id.* As Exhibit 1 to the *Fogle Declaration* makes clear, Cox also is offering telephony service in only selective communities in the Lake Charles, Louisiana, DMA, the New Orleans, Louisiana DMA and the Monroe, Louisiana-El Dorado, Arkansas DMA, electing to make the service available in Sulphur, Jonesboro, New Orleans, and St. Bernard Parish, but not in Lake Charles, De Ridder, Bastrop, Ruston, Winnfield, and Gramercy. *Id.*

[32] *Id.* (noting the 14 communities in which Time Warner and its affiliates do not offer telephony service in the Charlotte, North Carolina DMA, the Greensboro-High Point-Winston Salem, North Carolina DMA, the Greenville-New Bern-Washington, North Carolina DMA, the

Given such selective offering of telephony services by incumbent cable operators, it is unsurprising that, while seeking symmetric regulation in the video market, NCTA is quite content with maintaining asymmetric regulation in the telephony market. Indeed, NCTA has endorsed the continuation of asymmetric regulation of telephony services, asserting that "regulations designed for legacy telephone providers operating in a monopoly environment generally should *not* apply to VoIP services" except in limited circumstances.[33] According to NCTA, such legacy telephone regulations were "developed to protect consumers from the monopoly utility in a single-provider environment" and "are unnecessary and inappropriate" in a competitive marketplace.[34] The same holds true for legacy cable regulation.

NCTA's justification for subjecting VoIP services offered by new entrants to less regulation than that which applies to voice services offered by the incumbent is telling. First, according to NCTA, such disparate regulation is appropriate because "VoIP service uses nascent technologies that have yet to be deployed on any significant commercial scale, and which could present a host of as-yet-undetermined financial, technical, and operational challenges."[35] Second, NCTA insists that VoIP services should not be encumbered by the application of traditional telephone regulations because otherwise market entry would be deterred:

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Raleigh-Durham-Fayetteville, North Carolina DMA, the Charleston, South Carolina DMA, and the Myrtle Beach-Florence, South Carolina DMA).

[33] Comments of NCTA, *In re: IP-Enabled Services*, WC Docket No. 05-196, WC Docket 04-36 (May 28, 2004), at 15 (emphasis in original).

[34] *Id.* at 19-20.

[35] *Id.* at 15, n.19.

> The application of traditional state telephone regulations risk encumbering VoIP services with a web of costly and potentially inconsistent rules that will inevitably deter potential market entrants from offering the services, especially since efficient multi-state rollout of VoIP will depend on new centralized ordering, provisioning, and billing systems. Encumbrances are also possible at the local level, where at least some communities argue that *all* services delivered over cable plant should be subject to separate and duplicative municipal fees, requirements for additional permits, quality standards, privacy rules, and the like.
>
> This local layer of regulation makes no sense when – as here – new services can be offered simply by changing the pattern of signaling sent over an existing physical transmission facility, without imposing any additional burden on rights-of-way. Local regulation of new services such as VoIP delivered over the cable plant would stifle those services, since cable operators today can be subject to dozens or even hundreds of local franchising authorities for their cable systems in a single state. Offering VoIP services would be immensely more difficult with dozens or hundreds of inconsistent locally applied regulations.[36]

Of course, this same logic applies equally to IPTV. First, IPTV is a nascent technology, even more so than VoIP, and has not been deployed on nearly the same commercial scale as VoIP. Second, subjecting IPTV to the local franchising process would subject new entrants to even more burdensome local "encumbrances" that would, according to NCTA, "inevitably deter potential market entrants from offering the services ...." Finally, like VoIP, IPTV would be just another application on the BellSouth broadband network that would be offered without imposing any additional burdens on the public rights-of-way. Most of the work necessary to offer video service would take place in BellSouth's central offices and customer premises, and, although upgrades to and replacement of BellSouth's remote terminals also will be required to support a video offering, the vast majority of these terminals are located on private property.

BellSouth does not dispute that there are significant costs associated with legacy regulations that apply only to incumbents. BellSouth bears these costs on a daily basis in providing telecommunications services. However, the solution to this problem is to eliminate

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[36] *Id.* at 20-21 (emphasis in original) (footnotes omitted).

those legacy regulations where appropriate; the solution is not to impose those same regulations on new entrants, as NCTA seeks to do.

Respectfully submitted,

**BELLSOUTH CORPORATION**
**BELLSOUTH ENTERTAINMENT, LLC**

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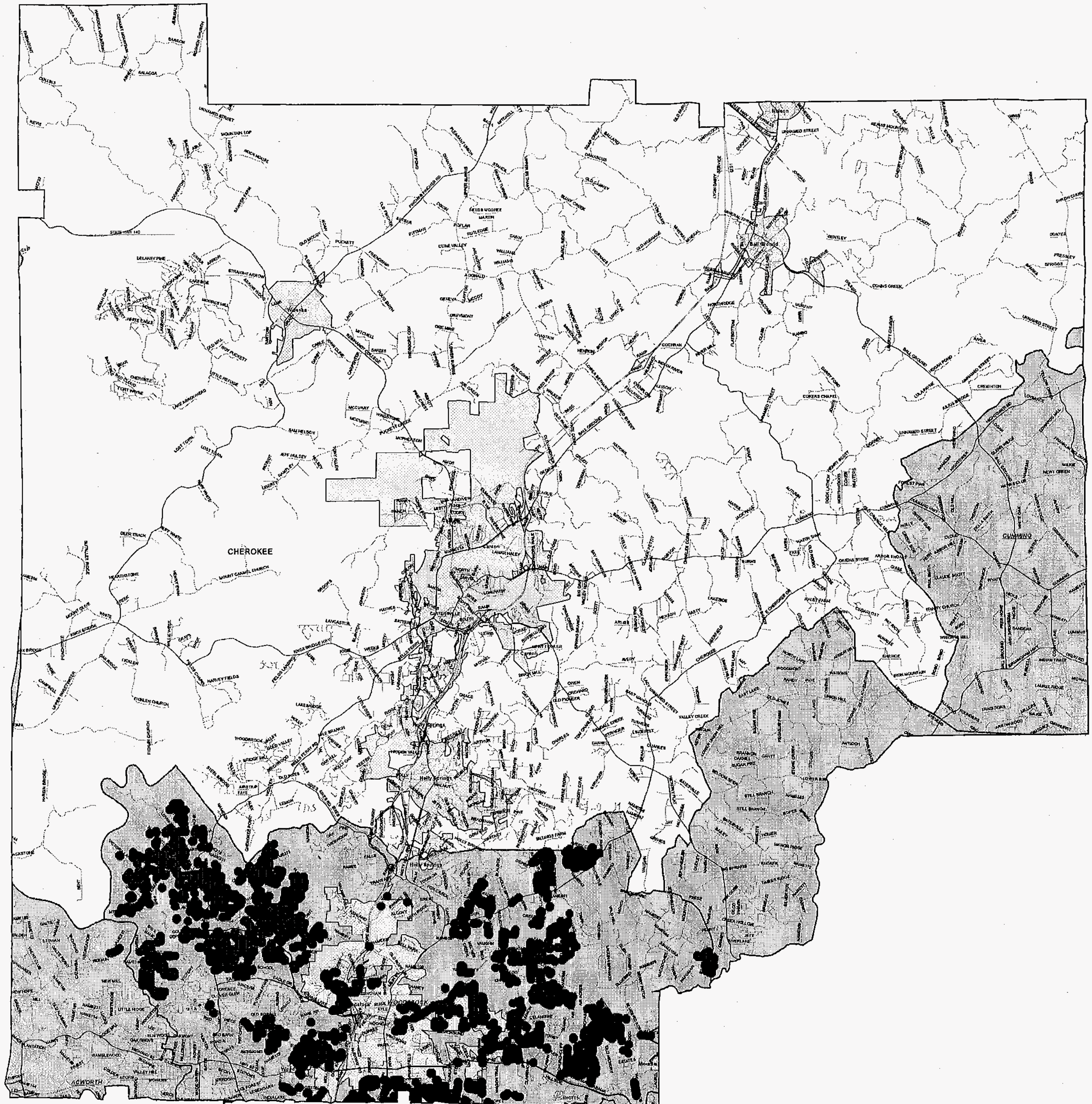
**Appendix 1**

Cherokee Co Service Area




Legend

- Servicable Area
- MAJOR STREETS
- County Border
- City Areas
- WIRE_CENTER

BELLSOUTH®

BellSouth Entertainment

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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| Annual Assessment of the Status of | ) | MB Docket No. 05-255 |
| Competition in Markets for the Delivery | ) | |
| of Video Programming | ) | |

**DECLARATION OF ERIC FOGLE**

Being of lawful age, and duly sworn upon oath, I do hereby depose and state:

1. My name is Eric Fogle. I am employed as a Director for BellSouth Resources, Inc., and am working with BellSouth Interconnection Services Marketing. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

2. I have worked in the telecommunications industry for more than twelve years, having started my career as a Network Engineer for AT&T. In early 1998, I joined BellSouth as a Business Development Analyst in the Product Commercialization Unit. From July 2000 through May 2003, I led the Wholesale Broadband Marketing group within BellSouth. I assumed my current position in June 2003. As a Business Analyst, and then as the Director of the Wholesale Broadband Marketing Group and continuing in my current position, I have been, and continue to be, actively involved in the evolution and growth of BellSouth's network including provisions for accommodating Digital Subscriber Line ("DSL") based services as well as the underlying technology. In this capacity, I am familiar with competing broadband technologies, particularly cable modem service, and monitor cable operators' broadband and telephony offerings.

3. In connection with this proceeding, I was asked to investigate the geographic areas in which the major cable operators in BellSouth's region – Cox, Comcast, and Time Warner – offer both cable and telephony services, whether by the cable operator itself or through an affiliate. As part of this investigation, BellSouth reviewed cable company press releases, cable company investor relations materials, and data obtained from the Warren Television & Cable Factbook published by Warren Communications News, which contains self-reported data from cable operators concerning the areas they serve and the services they provide in those areas. The data are summarized by company and by Designated Market Area (DMA), including the principal communities within each DMA.

4. Using the data collected from the cable companies and with the Warren Factbook data as the baseline, cable company web site responses to end-user telephony requests were collected to confirm the geographic areas in which cable operators provide telephony services. This process used specific end-user addresses in selective markets to verify whether telephony services were in fact currently available.

5. Attached as Exhibit 1 to this Declaration are the results of my investigation. As Exhibit 1 reflects, there are a number of examples within DMAs in which Cox, Comcast, and Time Warner are providing cable service across the BellSouth region where they are selectively offering telephony service to some communities but not other communities within the same DMA. The telephony service being offered by the cable operator may utilize analog, digital, or Voice over Internet Protocol (VoIP) technology.

I hereby swear that the foregoing is true and correct to the best of our information and belief.

Eric Fogle
Director Product Management
BellSouth Resources

Subscribed and sworn to before me this
the 10th day of October, 2005.

Notary Public

Gay P. Diiz
Notary Public, DeKalb County
Georgia
My Commission Expires
February 09, 2007

# Exhibit 1

*Cox Communications & Time Warner Cable / Entertainment & Comcast Cable in BellSouth 9-state Area*
**Telephony Product Offering Availability**

| State | Cable Provider | Major Market (DMA) Name | Telephony Available (Yes/No) | Community |
|---|---|---|---|---|
| **ALABAMA** | | | | |
| | **Time Warner Cable** | Dothan, AL | No | DALEVILLE |
| | **Comcast Cable Communications Inc.** | Birmingham (Anniston & Tuscaloosa), AL | No | GADSDEN |
| | | | No | TUSCALOOSA |
| | | Mobile, AL-Pensacola (Fort Walton Beach), FL | No | MOBILE |
| | | | No | DAUPHIN ISLAND |
| | | Huntsville-Decatur (Florence), AL | No | FLORENCE |
| | | | No | HUNTSVILLE |
| | | Columbus, GA | No | CLAYTON |
| | | Dothan, AL | No | DOTHAN |
| | | | No | ABBEVILLE |
| **FLORIDA** | | | | |
| | **Cox Communications Inc.** | Mobile, AL-Pensacola (Fort Walton Beach), FL | No | CRESTVIEW |
| | | | No | FORT WALTON BEACH |
| | | | No | PENSACOLA |
| | | Gainesville, FL | No | GAINESVILLE |
| | | Panama City, FL | No | FREEPORT |
| | **Time Warner Cable** | Jacksonville, FL | No | ST. AUGUSTINE |
| | | | No | LAKE CITY |
| | | | No | PALATKA |
| | | Fort Myers-Naples, FL | No | GOLDEN GATE |
| | | | No | CAPE CORAL |
| | | | No | IMMOKALEE |
| | | | No | LA BELLE |
| | | | No | ALVA |
| | | Tallahassee, FL-Thomasville, GA | No | LIVE OAK |
| | | | No | MAYO |
| | | | No | JENNINGS |
| | **Comcast Cable Communications Inc.** | Orlando-Daytona Beach-Melbourne, FL | No | LEESBURG |
| | | | No | SILVER SPRINGS SHORES |
| | | | No | DE BARY |
| | | Jacksonville, FL | Yes | JACKSONVILLE |
| | | | No | MACCLENNY<br>CRESCENT CITY<br>LAKE BUTLER<br>HASTINGS<br>WELAKA |
| | | Tampa-St. Petersburg (Sarasota), FL | No | LAKE WALES |
| | | | No | WAUCHULA |
| | | | No | SARASOTA |
| | | | No | VENICE |
| | | | No | BARTOW |
| | | | No | SEBRING |
| | | | No | ENGLEWOOD |
| | | | No | SPRING LAKE |
| | | Miami-Fort Lauderdale, FL | No | KEY WEST |
| | | | Yes | HIALEAH<br>POMPANO BEACH |
| | | | No | KENDALL<br>MARGATE<br>KEY LARGO |
| | | | No | MIAMI<br>NORTH DADE COUNTY<br>FORT LAUDERDALE<br>DAVIE<br>SOUTH BROWARD COUNTY<br>IMMOKALEE SEMINOLE INDIAN RESERVATION<br>BIG CYPRESS SEMINOLE INDIAN RESERVATION |
| | | West Palm Beach-Fort Pierce, FL | No | VERO BEACH |
| | | Gainesville, FL | No | WALDO |
| | | Fort Myers-Naples, FL | No | BONITA SPRINGS |
| | | | No | ARCADIA<br>PORT CHARLOTTE |
| | | Panama City, FL | No | PANAMA CITY |
| | | | No | MARIANNA |
| | | Tallahassee, FL-Thomasville, GA | No | TALLAHASSEE |
| | | | No | JASPER<br>MADISON<br>MONTICELLO<br>PERRY<br>QUINCY |

*Cox Communications & Time Warner Cable / Entertainment & Comcast Cable in BellSouth 9-state Area*
**Telephony Product Offering Availability**

| State | Cable Provider | Major Market (DMA) Name | Telephony Available (Yes/No) | Community |
|---|---|---|---|---|
| **GEORGIA** | | | | |
| | **Cox Communications Inc.** | Macon, GA | No | MACON |
| | **Time Warner Cable** | Columbus, GA | No | FORT BENNING |
| | **Comcast Cable Communications Inc.** | Chattanooga, TN | No | ROSSVILLE |
| | | | | LA FAYETTE |
| | | Greenville-Spartanburg-Anderson, SC-Asheville, NC | No | ELBERTON |
| | | Atlanta, GA | Yes | ATLANTA (central portion) |
| | | | No | TALLAPOOSA |
| | | | No | ATLANTA (northern portion) |
| | | | | ATLANTA (perimeter) |
| | | | | GRIFFIN |
| | | Jacksonville, FL | No | WAYNESVILLE |
| | | | | FOLKSTON |
| | | | | WOODBINE |
| | | | | NAHUNTA |
| | | Tallahassee, FL-Thomasville, GA | No | HOMERVILLE |
| | | | | QUITMAN |
| | | Macon, GA | No | MONTEZUMA |
| | | | | SOPERTON |
| | | | | WRIGHTSVILLE |
| | | Augusta, GA | No | WASHINGTON |
| | | | | AUGUSTA |
| | | | | WARRENTON |
| | | | | ADRIAN |
| | | | | LINCOLNTON |
| | | | | LOUISVILLE |
| | | | | MILLEN |
| | | | | TWIN CITY |
| | | Savannah, GA | No | TYBEE ISLAND |
| | | | | DARIEN |
| | | | | PEMBROKE |
| | | | No | SAVANNAH |
| | | | No | HINESVILLE |
| | | | | JESUP |
| | | | | EULONIA |
| | | | | MOUNT VERNON |
| | | | | GLENNVILLE |
| | | | | COLONELS ISLAND |
| | | | | CLAXTON |
| | | | | METTER |
| | | | | SYLVANIA |
| **KENTUCKY** | | | | |
| | **Comcast Cable Communications Inc.** | Louisville, KY | No | ELIZABETHTOWN |
| | | Evansville, IN | No | GREENVILLE |
| | | Paducah, KY-Cape Girardeau-Harrisburg, MO-Mount | No | PADUCAH |
| | | Bowling Green, KY | No | HORSE CAVE |
| | | Nashville, TN | No | FORT CAMPBELL |
| **LOUISIANA** | | | | |
| | **Cox Communications Inc.** | Alexandria, LA | No | PINEVILLE |
| | | Baton Rouge, LA | Yes | FRANKLIN |
| | | | Yes | BATON ROUGE |
| | | Lafayette, LA | Yes | CROWLEY |
| | | | | LAFAYETTE |
| | | | | ST. MARTINVILLE |
| | | | No | ABBEVILLE |
| | | | | NEW IBERIA |
| | | Lake Charles, LA | No | LAKE CHARLES |
| | | | Yes | SULPHUR |
| | | | No | DE RIDDER |
| | | **Monroe, LA-El Dorado, AR** | No | BASTROP |
| | | | Yes | JONESBORO |
| | | | No | RUSTON |
| | | | | WINNFIELD |
| | | New Orleans, LA | No | GRAMERCY |
| | | | Yes | NEW ORLEANS |
| | | | | ST. BERNARD PARISH |
| | | Shreveport, LA | No | BOSSIER CITY |
| | | | No | MINDEN |
| | | | | NATCHITOCHES |
| | **Time Warner Cable** | Monroe, LA-El Dorado, AR | No | WEST MONROE |
| | | Shreveport, LA | Yes | SHREVEPORT |
| | **Time Warner Entertainment Co. LP** | New Orleans, LA | No | LA PLACE |
| | | | No | HOUMA |

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| State | Cable Provider | Major Market (DMA) Name | Telephony Available (Yes/No) | Community |
|---|---|---|---|---|
| MISSISSIPPI | | | | |
| | Cox Communications Inc. | Greenwood-Greenville, MS | No | GREENVILLE |
| | Time Warner Cable | Jackson, MS | No | JACKSON |
| | Comcast Cable Communications Inc. | (blank) | No | PAULDING |
| | | Meridian, MS | No | MERIDIAN |
| | | Columbus-Tupelo-West Point, MS | No | TUPELO |
| | | Hattiesburg-Laurel, MS | No | LAUREL |
| | | | No | HATTIESBURG |
| | | Memphis, TN | No | CORINTH |
| NORTH CAROLINA | | | | |
| | Cox Communications Inc. | Greenville-New Bern-Washington, NC | No | GREENVILLE |
| | | | No | PARMELE |
| | | | | WASHINGTON |
| | | Raleigh-Durham (Fayetteville), NC | No | SCOTLAND NECK |
| | Time Warner Cable | Greensboro-High Point-Winston Salem, NC | No | DAVIDSON COUNTY |
| | | Greenville-New Bern-Washington, NC | No | BAYBORO |
| | | Raleigh-Durham (Fayetteville), NC | Yes | ROBBINS |
| | Time Warner Entertainment Co. LP | Charlotte, NC | No | GASTONIA |
| | | | Yes | CHARLOTTE |
| | | | | KANNAPOLIS |
| | | | | ROCKINGHAM |
| | | | | SHELBY |
| | | | No | MONROE |
| | | | No | ALBEMARLE |
| | | | | SALISBURY |
| | | Greensboro-High Point-Winston Salem, NC | No | HIGH POINT |
| | | | Yes | BURLINGTON |
| | | | | DOBSON |
| | | | | GREENSBORO |
| | | | | REIDSVILLE |
| | | | | WINSTON-SALEM |
| | | | No | ASHEBORO |
| | | Greenville-New Bern-Washington, NC | Yes | JACKSONVILLE |
| | | | | MOREHEAD CITY |
| | | | No | CHERRY POINT |
| | | | | FARMVILLE |
| | | Myrtle Beach-Florence, SC | Yes | LUMBERTON |
| | | Raleigh-Durham (Fayetteville), NC | No | GARNER |
| | | | Yes | CARY |
| | | | | CHAPEL HILL |
| | | | | DURHAM |
| | | | | FAYETTEVILLE |
| | | | | GOLDSBORO |
| | | | | HENDERSON |
| | | | | RALEIGH |
| | | | No | WILSON |
| | | | No | SOUTHERN PINES |
| | | Wilmington, NC | Yes | ELIZABETHTOWN/WHITEVILLE |
| | | | | WILMINGTON |
| SOUTH CAROLINA | | | | |
| | Time Warner Cable | Charleston, SC | Yes | SUMMERVILLE |
| | | | No | RIDGEVILLE |
| | | | | LANE |
| | Time Warner Entertainment Co. LP | Myrtle Beach-Florence, SC | No | MYRTLE BEACH |
| | | | Yes | FLORENCE |
| | | | | SURFSIDE BEACH |
| | | Columbia, SC | Yes | COLUMBIA |
| | Comcast Cable Communications Inc. | Greenville-Spartanburg-Anderson, SC-Asheville, NC | No | CALHOUN FALLS |
| | | Savannah, GA | No | HAMPTON |
| | | | No | BEAUFORT USMC AIR STATION |
| | | Charleston, SC | No | CHARLESTON |
| | | | | WALTERBORO |
| | | Columbia, SC | No | NEWBERRY |

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| State | Cable Provider | Major Market (DMA) Name | Telephony Available (Yes/No) | Community |
|---|---|---|---|---|
| TENNESSEE | | | | |
| | **Time Warner Cable** | Paducah, KY-Cape Girardeau-Harrisburg, MO-Mount | No | UNION CITY |
| | | Memphis, TN | Yes | MEMPHIS |
| | **Comcast Cable Communications Inc.** | Chattanooga, TN | No | ATHENS<br>CHATTANOOGA<br>VONORE |
| | | Nashville, TN | No | LIVINGSTON<br>NASHVILLE<br>SMITHVILLE<br>HARTSVILLE<br>ASHLAND CITY<br>WOODBURY<br>WESTMORELAND<br>BYRDSTOWN<br>RED BOILING SPRINGS<br>LYNCHBURG |
| | | Knoxville, TN | No | LA FOLLETTE |
| | | | No | OAK RIDGE<br>HUNTSVILLE<br>KNOXVILLE<br>WARTBURG<br>HARRIMAN<br>WALDEN CREEK<br>FAIRFIELD GLADE<br>NORRIS<br>COBBLY NOB<br>KODAK<br>JAMESTOWN<br>GRIMSLEY |
| | | Tri-Cities (Bristol, VA-Kingsport-Johnson City, TN) | No | GRAY |